

103^D CONGRESS
1ST SESSION

S. 679

To extend and enhance the operation of the “Super 301” provisions of the Trade Act of 1974, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 30 (legislative day, MARCH 3), 1993

Mr. RIEGLE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To extend and enhance the operation of the “Super 301” provisions of the Trade Act of 1974, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCE.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Fair Trade Assurances Act of 1993”.

6 (b) **REFERENCE.**—Whenever in this Act an amend-
7 ment is expressed in terms of an amendment to a section,
8 subsection, or other provision, the reference shall be con-
9 sidered to be made to a section, subsection, or other provi-
10 sion of the Trade Act of 1974.

1 **SEC. 2. SPECIFICATION OF SECTORAL PRIORITY PRACTICES.**
2

3 Section 181(a) (19 U.S.C. 2241) is amended—

4 (1) by striking out “and” at the end of para-
5 graph (1)(B);

6 (2) by striking out the period at the end of
7 paragraph (1)(C) and inserting “;”; and

8 (3) by inserting after paragraph (1)(C) the fol-
9 lowing:

10 “(D) identify, if for such calendar year the
11 United States merchandise trade balance (ex-
12 cluding crude petroleum imports) was in deficit,
13 each foreign country that—

14 “(i) accounted for not less than 15
15 percent of such deficit, and

16 “(ii) had a global current account sur-
17 plus for such year in an amount not less
18 than such deficit; and

19 “(E) specify each act, policy, or practice
20 identified under subparagraph (A) that was im-
21 plemented by a foreign country identified under
22 subparagraph (D) with respect to any goods
23 sector or service sector that accounted for not
24 less than 10 percent of the merchandise trade
25 and current account deficits between the United

1 States and such foreign country during such
2 calendar year.”;

3 (4) by striking out “paragraph (1),” in para-
4 graph (2) and inserting “paragraph (1) (A), (B), or
5 (C),”; and

6 (5) by striking out “analysis and estimate” in
7 paragraph (3) and inserting “analyses, estimates,
8 identifications, and specifications”.

9 **SEC. 3. PERMANENT STATUS OF “SUPER 301” PROGRAM; AP-**
10 **PLICATION OF PROGRAM TO SECTORAL PRI-**
11 **ORITY PRACTICES.**

12 (a) IN GENERAL.—Section 310(a) (19 U.S.C.
13 2420(a)) is amended—

14 (1) by striking out “calendar year 1989, and
15 also the date in calendar year 1990,” in paragraph
16 (1) and inserting “any calendar year”;

17 (2) by amending subparagraphs (A) and (B) of
18 paragraph (1) to read as follows:

19 “(A) priority practices;

20 “(B) priority foreign countries;”; and

21 (3) by amending paragraphs (2) and (3) to
22 read as follows:

23 “(2)(A) For purposes of this section, the term
24 ‘priority foreign country’ means—

1 “(i) any foreign country identified under
2 section 181(a)(1)(D); and

3 “(ii) any other foreign country that, on the
4 basis of the report required under section 181,
5 satisfies the criteria in subparagraph (B).

6 “(B) In identifying priority foreign countries
7 under subparagraph (A)(ii), the Trade Representa-
8 tive shall take into account—

9 “(i) the number and pervasiveness of the
10 acts, policies, and practices described in section
11 181(a)(1)(A), and

12 “(ii) the level of United States exports of
13 goods and services that would be reasonably ex-
14 pected from full implementation of existing
15 trade agreements to which that foreign country
16 is a party, based on the international competi-
17 tive position and export potential of such prod-
18 ucts and services.

19 “(3)(A) For purposes of this section, the term
20 ‘priority practices’ means—

21 “(i) acts, policies, and practices specified
22 under section 181(a)(1)(E); and

23 “(ii) other major barriers and trade dis-
24 torting practices, the elimination of which are
25 likely to have the most significant potential to

1 increase United States exports, either directly
2 or through the establishment of a beneficial
3 precedent.

4 “(B) In identifying priority practices under sub-
5 paragraph (A)(ii) the Trade Representative shall
6 take into account—

7 “(i) the international competitive position
8 and export potential of United States products
9 and services;

10 “(ii) circumstances in which the sale of a
11 small quantity of a product or service may be
12 more significant than its value,

13 “(iii) circumstances in which the practice
14 has the effect of imposing a total or near total
15 barrier to the importation of foreign goods or
16 services, and

17 “(iv) the measurable medium-term and
18 long-term implications of government procure-
19 ment commitments to United States export-
20 ers.”.

21 (b) CONFORMING AMENDMENTS.—Section 310(d) is
22 amended—

23 (1) by striking “in calendar year 1990, and on
24 the anniversary of such date in the succeeding cal-
25 endar years” in paragraph (1); and

1 (2) by striking “(a)(1)(A)” the first place it ap-
 2 pears in paragraph (2) and inserting “(a)(1)(B)”.

3 **SEC. 4. ACTION TO ELIMINATE PRIORITY PRACTICES.**

4 (a) MANDATORY ACTION.—

5 (1) IN GENERAL.—Section 301(a) (19 U.S.C.
 6 2411(a)) is amended—

7 (A) by redesignating paragraphs (1), (2),
 8 and (3) as paragraphs (2), (3), and (4), respec-
 9 tively;

10 (B) by inserting before paragraph (2) (as
 11 redesignated by paragraph (1)) the following
 12 new paragraph:

13 “(1)(A) If the United States Trade Representa-
 14 tive determines under section 304(a)(1) that an act,
 15 policy, or practice identified under section
 16 181(a)(1)(E)—

17 “(i) violates, or is inconsistent with, the
 18 provisions of, or otherwise denies benefits to the
 19 United States under any trade agreement; or

20 “(ii) is unjustifiable and burdens or re-
 21 stricts (or threatens to burden or restrict) Unit-
 22 ed States commerce;

23 the response of the United States to such act, policy,
 24 or practice shall be undertaken in accordance with
 25 subparagraph (B).

1 “(B) If the Trade Representative makes a de-
2 termination referred to in subparagraph (A), the
3 President, within 30 days after the date of the de-
4 termination—

5 “(i) shall direct the Trade Representative
6 to implement the action recommended by the
7 Trade Representative under section
8 304(a)(1)(B) to obtain the elimination of the
9 act, policy, or practice; or

10 “(ii) shall, if the President considers that
11 there is an alternative (hereafter referred to as
12 the ‘alternative plan’) for obtaining the elimi-
13 nation of such act, policy, or practice and that
14 the alternative plan is preferable to the action
15 recommended by the Trade Representative,
16 transmit to the Congress a document that
17 meets the requirements in subparagraph (D).

18 “(C) An alternative plan submitted under sub-
19 paragraph (B)(ii) shall provide, in the case of unsat-
20 isfactory progress by the priority foreign country in
21 eliminating the priority practice, for the implementa-
22 tion, for such time as may be appropriate, by the
23 President of a restriction, limitation, or other action
24 that is reciprocal in scope and effect to such priority
25 practice.

1 “(D) A document referred to in subparagraph
2 (B)(ii) shall—

3 “(i) describe the action recommended by
4 the Trade Representative under section
5 304(a)(1)(B) to eliminate the act, policy, or
6 practice;

7 “(ii) describe the alternative plan in detail,
8 including—

9 “(I) any reciprocal limitation, restric-
10 tion, or action of the kind referred to in
11 subparagraph (C) provided for under the
12 plan; and

13 “(II) the period of time that will be
14 required to implement fully the plan and
15 the specific interim results that should be
16 achieved under the plan from time-to-time
17 during that period;

18 “(iii) describe the number of jobs to be
19 created and the estimated increase in exports
20 resulting from implementation of the plan;

21 “(iv) cite the legal authorities for taking
22 the measures contemplated by the alternative
23 plan;

24 “(v) contain, if the President considers
25 that statutory authority is necessary for the im-

1 plementation of any part of the alternative plan
2 (including the implementation of any reciprocal
3 limitation, restriction, or action described under
4 clause (ii)), appropriate suggested legislative
5 proposals; and

6 “(vi) state the reasons why the alternative
7 plan is preferable to the taking of the action
8 recommended by the Trade Representative.

9 “(E) If the President transmits an alternative
10 plan to the Congress under subparagraph (B) and a
11 joint resolution described in section 152(a)(1)(C) is
12 not enacted within the 60-day period beginning on
13 the date on which the alternative plan was transmit-
14 ted, the alternative plan shall take effect and the
15 President shall commence implementation of the
16 plan.

17 “(F) If the President transmits an alternative
18 plan to Congress under subparagraph (B) and a
19 joint resolution described in section 152(a)(1)(C) is
20 enacted within the 60-day period beginning on the
21 date on which the alternative plan was transmitted,
22 the alternative plan shall not take effect and the
23 President shall direct the Trade Representative to
24 implement the action recommended by the Trade

1 Representative under section 304(a)(1)(B) to obtain
2 the elimination of the priority foreign practice.”.

3 (2) CONFORMING AMENDMENTS.—Subpara-
4 graph (B) of section 301(a)(2) (as redesignated by
5 paragraph (1)(A)) is amended—

6 (A) by striking out “foreign country—”
7 and inserting “foreign country (other than a
8 foreign country to which section 181(a)(1)(E)
9 applies)—”; and

10 (B) by inserting “(or threatens to burden
11 or restrict)” after “restricts” in clause (ii).

12 (b) DISCRETIONARY ACTION.—Section 301(b)(1) is
13 amended by inserting “(or threatens to burden or re-
14 strict)” after “restricts”.

15 (c) DEFINITIONS.—Section 301(d) is amended by
16 adding at the end the following new paragraph:

17 “(10) An act, policy, or practice threatens to
18 burden or restrict United States commerce if the
19 act, policy, or practice does not currently burden or
20 restrict United States commerce, but, if not cor-
21 rected, is reasonably expected to burden or restrict
22 United States commerce.”.

1 **SEC. 5. INITIATION OF INVESTIGATIONS UPON RESOLU-**
2 **TION OF CONGRESSIONAL COMMITTEES.**

3 Section 302(b) is amended by adding at the end the
4 following new paragraph:

5 “(3) Upon the adoption by either the Commit-
6 tee on Ways and Means of the House of Representa-
7 tives or the Committee on Finance of the Senate of
8 a resolution that—

9 “(A) describes an act, policy, or practice of
10 the foreign country; and

11 “(B) states that it is the opinion of the
12 Committee that such act, policy, or practice is
13 an act, policy, or practice that is described in
14 section 301(a) (1)(A) or (2)(B);

15 the Trade Representative shall initiate an investiga-
16 tion under this chapter to determine whether the
17 matter is actionable under section 301.”.

18 **SEC. 6. CONFORMING AMENDMENTS.**

19 (a) ACTIONS BY UNITED STATES TRADE REP-
20 RESENTATIVE.—Section 301, as amended by section 104,
21 is amended—

22 (1) by striking out that part of subsection
23 (a)(3) (as redesignated by section 104(a)(1)(A)) that
24 precedes subparagraph (A) and inserting “The
25 President is not required to take action under para-
26 graph (1)(B) (i) or (ii) and the Trade Representa-

1 tive is not required to take action under paragraph
2 (2) in any case in which—”;

3 (2) by striking out “paragraph (1)” in sub-
4 section (a)(4) (as redesignated by section
5 104(a)(1)(A)) and inserting “paragraph (1) (B)(i)
6 or (F) or paragraph (2)”;

7 (3) by striking out “subsection (a) or (b)” each
8 place it appears in paragraphs (1), (2)(A), (3), and
9 (5) of subsection (c) and inserting “paragraph
10 (1)(B)(i), (1)(F), or (2) of subsection (a) or sub-
11 section (b)”.

12 (b) DETERMINATIONS BY UNITED STATES TRADE
13 REPRESENTATIVE.—Section 304(a)(1) (19 U.S.C.
14 2414(a)(1)) is amended—

15 (1) by striking out “(a)(1)(B) or” in subpara-
16 graph (A)(ii) and inserting “(a) (1)(A) or (2)(B) or
17 subsection”;

18 (2) by striking out subparagraph (B) and in-
19 serting the following:

20 “(B) if the determination under subpara-
21 graph (A) is affirmative with respect to a prac-
22 tice described in section 301(a)(1)(A), deter-
23 mine, and submit to the President, a rec-
24 ommendation for action by the Trade Rep-

1 representative under section 301(c) to obtain the
2 elimination of such practice; or

3 “(C) if the determination under subpara-
4 graph (A) (other than with respect to an action
5 described in section 301(a)(1)(A)) is affirma-
6 tive, determine what action, if any, the Trade
7 Representative should take under subsection
8 (a)(2) or (b) of section 301.”.

9 (c) IMPLEMENTATION OF ACTIONS.—Section 305 (19
10 U.S.C. 2414) is amended—

11 (1) by amending paragraph (1) of subsection
12 (a) to read as follows:

13 “(1) Except as provided in paragraph (2), the
14 Trade Representative shall—

15 “(A) implement the action directed by the
16 President under subparagraph (B)(i) or (F) of
17 section 301(a)(1) by no later than the date that
18 is 30 days after the date such direction is re-
19 ceived; and

20 “(B) implement the action the Trade Rep-
21 resentative determines under section
22 304(a)(1)(C) to take under section 301, subject
23 to the specific direction, if any, of the President
24 regarding any such action, by no later than the

1 date which is 30 days after the date on which
2 such determination is made.”;

3 (2) by striking out “section 301” in subsection
4 (a)(2)(A) and inserting “paragraph (1)(B), (1)(F),
5 or (2) of section 301(a) or section 301(b)”;

6 (3) by inserting “or (3)” after “302(b)(1)” in
7 subsection (a)(2)(A)(i)(II); and

8 (4) by striking out “section 301” in subsection
9 (b)(1) and inserting “section 301(b)”.

10 (d) MONITORING OF FOREIGN COMPLIANCE.—Sec-
11 tion 306(a) (19 U.S.C. 2416(a)) is amended—

12 (1) by striking out “section 301(a)(2)(B)” and
13 inserting “section 301(a)(3)(B)”;

14 (2) by striking out “subsection (a)(1)(B)” and
15 inserting “subsection (a) (1)(A) or (2)(B)”.

16 (e) MODIFICATION AND TERMINATION OF AC-
17 TIONS.—Section 307(a)(1)(A) (19 U.S.C. 2417(a)(1)(A))
18 is amended by striking out “301(a)(2)” and inserting
19 “301(a)(3)”.

20 (f) RESOLUTIONS DISAPPROVING CERTAIN AC-
21 TIONS.—Section 152(a)(1) (19 U.S.C. 2192(a)(1)) is
22 amended—

23 (1) by striking out “and” at the end of sub-
24 paragraph (A);

1 (2) by striking out the period at the end of sub-
2 paragraph (B) and inserting “; and ”; and

3 (3) by adding at the end the following new sub-
4 paragraph:

5 “(C) a joint resolution of the two Houses of
6 Congress, the matter after the resolving clause of
7 which is as follows: “That the Congress does not ap-
8 prove the alternative plan transmitted under section
9 301(a)(1)(B)(ii) of the Trade Act of 1974 to the
10 Congress on .,’ the blank space being filled
11 with the appropriate date.”.

12 (g) SPECIAL RULES RELATING TO CONGRESSIONAL
13 PROCEDURES.—Section 154 is amended—

14 (1) by inserting “301(a)(1)(B)(ii),” after
15 “203(b),” in subsection (a); and

16 (2) by inserting “, and for purposes of section
17 301(a)(1) (E) and (F), the 60-day period referred to
18 in such section,” after “such sections” in subsection
19 (b).

○